LIAU NYUN FUI

v.

TIMBALAN MENTERI HAL EHWAL DALAM NEGERI, MALAYSIA & ORS.

HIGH COURT MALAYA, IPOH
ONG SEE SENG JC
[ORIGINATING SUMMONS NO. 24-628-89]
18 DECEMBER 1989

CIVIL PROCEDURE: *Preventive detention - Restricted Residence Act - Section 2 - Federal Constitution Article 5 - In accordance with law to include procedure - Time - Reasonable time - Delay in the issuance of the restriction order - Whether unreasonable delay - Whether order null and void.*

The plaintiff applied to the Court for a declaration that his restriction to Bandaran Tapah, Daerah Batang Padang, State of Perak ('the area') under the restriction order dated 17 June 1989 under the hand of the 1st defendant the restriction order be declared null and of no effect. The plaintiff also sought a consequential order that he need not comply with the restriction order and the regulations imposed on him.

The facts are as follows:

(1) A warrant of arrest and detention for the arrest and detention of the plaintiff at Penjara Kepayan Kota Kinabalu was issued by the 1st defendant on 27 January 1989 ('the first order') on the grounds that the plaintiff was a promoter of illegal 4 digit lottery in Sandakan Sabah. It was further stated that it was necessary that the plaintiff be restricted to the area.

(2) On 6 May 1989 the plaintiff was arrested pursuant to the first order and detained at penjara Kepayan Kota Kinabalu.

(3) On 17 June 1989 the 1st defendant issued the restriction order under s. 2(ii) of the Restricted Residence Act ('RRA') restricting the plaintiff to the area for 3 years from 17 June 1989. The restriction order was served on the plaintiff on 17 June 1989 and was transferred from the Penjara Kepayan Kota Kinabalu to bandaran Tapah on 18 June 1989.

The plaintiff contended that there was no justification for his continued detention for the period between 7 May 1989 to 17 June 1989 as it was stated by the 1st defendant in his sworn affidavit that he was satisfied that it was not necessary to hold an enquiry under s. 2(i) or 2(ii) of the Restricted Residence Act after the issue of the First Order. The place named in both orders were the same.

The Senior Federal Counsel submitted that the plaintiff must satisfy the Court that the plaintiff's detention under s. 2(i) of the Restricted Residence Act is illegal and that the 1st defendant is not obliged in law to issue the restriction order immediately as various statements and further investigations had to be made in Sabah.

Held:

[1] Applying Suffian J in *Assa Singh v. Menteri Besar Johore:* "the Minister first considers written information and makes or causes to be made such enquiry as he may deem necessary ... if there are reasonable grounds ... then (the first order) is issued ... After detention under the first order, the Minister then after such enquiry as he may deem necessary, make the restriction order ..."

[2] Applying Lee Hun Hoe CJ (Borneo) in *Re Tan Boon Liat* "in accordance with law" in Article 5 of the Federal Constitution is wide enough to cover procedure.

[3] Applying V.C. George J in *Teoh Lean Fatt v. Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia* that although s. 2 of Restricted Residence Act does not prescribe a time limit for all steps to be taken pursuant to this section and the implementations of the subsequent notices must be made within a reasonable time.

[4] Section 54(2) of the Interpretation Act 1967 provides that where no time is prescribed then anything which shall be done shall be done with all convenient speed.

[5] The law of preventive detention must be construed strictly and in the case of doubt, the Court must lean in favour of the subject.

[6] A detention not in accordance with law is inconsistent with the fundamental rights guaranteed by Article 5 of the Federal Constitution.

[7] There is no evidence before the Court to show why the restriction order could not have been issued earlier than 17 June 1989 when the plaintiff was already in detention, since 6 May 1989.

[8] In the absence of an explanation acceptable to the Court and in the circumstances of the case there has been unreasonable delay in the issue of the restriction order.

[9] Declaration in favour of the plaintiff that the restriction is null and void and of no effect and that the plaintiff need not comply with the restriction order and restrictions imposed with taxed costs.

[Order accordingly.]

Cases referred to:
Assa Singh v. Menteri Besar Johore [1969] 2 MLJ 30
Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Ors. v. Cheow Siong Chin [1987] CLJ (Rep) 393
Re Tan Boon Liat [1977] 2 MLJ 108
Andrew s/o Thamboosamy v. Superintendant of Pudu Prison K.L. [1976] 2 MLJ 156
PP v. Koh Yoke Koon [1988] 1 CLJ (Rep) 269

Legislation referred to:
Federal Constitution, art. 5(1)
Interpretation Act 1967, s. 54(2)
Restricted Residence Act, s. 2(ii)

For the plaintiff - Karpal Singh; M/s Karpal Singh & Co.
For the defendants - Balia Yusof bin Haji Wahi, SFC

JUDGMENT

Ong See Seng JC:

This is an application by the plaintiff Liau Nyun Fui to this Court for a declaration that his restriction to Bandaran Tapah, Daerah Batang Padang, State of Perak under the restriction order dated 17 June 1989 under the hand of the Hon. Deputy Home Minister be declared null and void and of no effect. The plaintiff further seeks a consequential order that he need not comply with the said restriction order and the regulations imposed upon him. The plaintiff has cited the following persons as the defendants herein i.e., the Hon. Deputy Home Minister, Chief Police Officer Perak, OCPD Police District Batang Padang Perak and the Government of Malaysia.

The following facts appear not to be in dispute:

(i) The warrant of arrest and detention for the arrest and detention of the plaintiff at Penjara Kepayan Kota Kinabalu, Sabah was issued by the 1st named defendant on 27 January 1989.

(ii) The grounds for the arrest was that the plaintiff was a promoter of illegal 4 Digit Lottery in Sandakan, Sabah.

(iii) That it was necessary that the plaintiff be restricted to Bandaran Tapah Daerah Batang Padang, Perak.

(iv) The plaintiff was entitled to appeal within 14 days of service on him of the grounds of his arrest.

(v) On 6 May 1989 the plaintiff was arrested and detained at Penjara Kepayan Kota Kinabalu, Sabah.

(vi) On 17 June 1989 the 1st named defendant issued the restriction order under s. 2(ii) of the Restricted Residence Act (RRA) restricting the plaintiff to Bandaran Tapah, Daerah Batang Padang for a period of 3 years commencing from 17 June 1989.

(vii) The restriction order was served on the plaintiff on 17 June 1989.

(viii) The plaintiff was transferred from Penjara Kepayan Kota Kinabalu, Sabah to Bandaran Tapah on 18 June 1989.

The plaintiff's case rests on 2 grounds, namely:

(a) the restriction order restricting the plaintiff to Bandaran Tapah on 17 June 1989 was not complied with strictly.

(b) there was no justification for the continued detention of the plaintiff for the period from 7 May 1989 to 17 June 1989.

As I understand it, Counsel for the plaintiff Mr. Karpal, in the course of his submission is not pressing the first ground in view of the explanation of Acting ASP Yap Hock Lee in his affidavit affirmed on 13 September 1989 encl. 5. The Court accepts the explanation for the plaintiff being in Bandaran Tapah only on 18 June 1989 instead of 17 June 1989.

Counsel for the plaintiff submits that any arrest and detention of a person has to be in accordance with law. The liberty of a person is a fundamental liberty guaranteed under Article 5(1) of the Federal Constitution. He submits that in the affidavit of the 1st named defendant affirmed on 19 October 1989 encl. 6 the 1st named defendant was satisfied that it was not necessary to hold an enquiry under s. 2(i) or further enquiry under s. 2(ii). In the circumstances Counsel submits there was no justification for the restriction order to be issued only on 17 June 1989, a period of 6 weeks after the plaintiff had been arrested and detained on 6 May 1989.

Senior Federal Counsel in his submission stated that the plaintiff must satisfy the Court that the plaintiff's detention under s. 2(i) of the Restriction Residence Act is illegal. Sections 2(i) and (ii) must be considered together. 1st named defendant was not obliged to issue the restriction order immediately because Form A clearly states that the detention should be until such further order from the minister. Various statements and further investigations have to be made. These investigations have to be done in Sabah. Senior Federal Counsel also referred to *Cheow Siong Chin's* case ([1988] MLJ 432) where there was a lapse of 2 months between

the detention order and the restriction order. Senior Federal Counsel further submitted that the Court has a discretion whether or not to grant an order of a declaratory nature. Unless the Court is satisfied that there was a traversity of justice, that discretion should be exercised against the granting of the declaration. He further maintains that justice should be for both parties.

Various authorities have been cited to me and I shall refer to some of these authorities:

In *Assa Singh v. Menteri Besar Johore* [1969] 2 MLJ 30 Suffian FJ (as he then was) stated and I quote:

> The Minister first considers written information and makes or causes to be made such enquiry as he may deem necessary. If it appears to him that there are reasonable grounds for believing any person is required to reside in any particular district he then issues an order for the arrest and detention of such person. After the person is arrested and detained under the first order, the Minister then after such enquiry as he may deem necessary makes an order under s. 2(ii) of the Enactment that from a date to be stated in such order the person would be required to reside in such district or mukim as may be specified in the order.

The above pronouncement found favour with the Supreme Court in *Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Ors. v. Cheow Siong Chin* [1987] CLJ (Rep) 393.

In *Re Tan Boon Liat* [1977] 2 MLJ 108 Lee Hun Hoe CJ (Borneo) stated that the expression "in accordance with law" in Article 5(i) of the Federal Constitution is wide enough to cover procedure as well.

In *Teoh Lean Fatt v. Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Ors.* [1991] 4 CLJ (Rep) 451 V.C. George J held:

> that although s. 2 does not prescribe a time limit it cannot but be that each of the various steps to be taken pursuant to this section and the implementation of each of the consequential orders made pursuant thereto had to be effected within a reasonable time.

Section 54(2) of the Interpretation Act 1967 provides that where no time is prescribed then anything which shall be done, shall be done with all convenient speed.

The law of preventive detention must be construed strictly and in case of doubt the Court should lean in favour of the subject - *Andrew s/o Thamboosamy v. Superintendant of Pudu Prison K.L.* [1976] 2 MLJ 156.

The Supreme Court in *PP v. Koh Yoke Koon* [1988] 1 CLJ (Rep) 269 has held that a detention not in accordance with law, is inconsistent with the fundamental right guaranteed by Article 5(1) of the Federal Constitution.

Examining the evidence before this Court, I find that the 1st named defendant has stated categorically in his affidavit affirmed on 19 October 1989 Encl. 6 that after carefully scrutinising the written information and documents he had reasonable grounds for believing that the plaintiff should be required to reside in a certain area i.e., Bandaran Tapah. He was satisfied that it was not necessary to hold an enquiry under s. 2(i) and he accordingly issued the order dated 27 January 1989. After the arrest and detention of the plaintiff on 6 May 1989 the 1st named defendant issued the restriction order on 17 June 1989. Again the 1st named defendant stated that after carefully scrutinising the relevant written information and documents he was satisfied that it was not necessary to hold an enquiry under s. 2(ii) of the Restriction Residence Act. He was satisfied that the plaintiff should be required to reside in Bandaran Tapah.

The place of restriction for the plaintiff remained the same as that stated in the order of 27 January 1989.

The arrest and detention of the plaintiff on 6 May 1989 and his continued detention until 17 June 1989 has to be in accordance with law.

There is no evidence before me as to why the order of restriction could not be issued earlier than 17 June 1989 when the plaintiff had already been held in detention since 6 May 1989.

I agree with Counsel for the plaintiff that in *Cheow Siong Hin's* case, delay was not an issue before that Court.

In the absence of an explanation acceptable to this Court and in the circumstances of this case I rule that there has been unreasonable delay in the issue of the restriction order. The plaintiff is entitled to be freed from all the restrictions imposed upon him by the order dated 17 June 1989 under the hand of the Hon. Deputy Home Minister and I so declare.

Order - (1) This Court declares that the plaintiff's restriction to Bandaran Tapah Daerah Batang Padang, Perak on the authority of the restriction order dated 17 June 1989 under the hand of the 1st named defendant is null and void and of no effect.

(2) This Court further declares that the plaintiff is not obliged to comply with the restriction order and the restrictions imposed upon him thereby.

(3) The defendants do pay to the plaintiff such costs as may be taxed by a proper officer of this Court on a party and party basis.

Also found at [1990] 1 CLJ 929